

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE THE RESERVE PRIMARY FUND
SECURITIES & DERIVATIVE CLASS
ACTION LITIGATION

No. 08-cv-8060-PGG
(Class Action)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR ENTRY OF A FINAL DISTRIBUTION ORDER**

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*Lead Counsel for Lead Plaintiff and the
Class*

Dated: August 15, 2014

Lead Counsel for Lead Plaintiff Third Avenue Institutional International Value Fund, L.P. (“Lead Plaintiff”), Bernstein Litowitz Berger & Grossmann LLP (“Lead Counsel”), with the support of the Board of Trustees of the Primary Fund-In Liquidation (f/k/a the Reserve Primary Fund) (the “Fund”), respectfully submits this memorandum of law in support of the motion for entry of a [Proposed] Final Distribution Order in the above-captioned action (the “Action”). The Motion is supported by the accompanying declaration of the Claims Administrator for the Settlement with the Class, and the Court-appointed liquidation agent, Crederian Fund Services LLC (“Crederian”), through the Declaration of Eugene P. Grace, Esquire, Re Claims Administrator Work Performed And Work Remaining To Be Performed (“Grace Decl.”).¹

Lead Counsel has met and conferred with counsel for the other Settling Parties, and confirmed that they do not oppose the Motion. Lead Counsel respectfully submits that this unopposed motion may be decided without oral argument.

I. REQUEST FOR ENTRY OF FINAL DISTRIBUTION ORDER

On January 13, 2014, the Court entered an Order and Final Judgment (ECF No. 112, the “Judgment”) approving the terms of the class action settlement. Under the terms of the Judgment (¶11), following the Effective Date (the date by which the appeals period has expired), Lead Counsel shall move the Court for entry of a Final Distribution Order authorizing distribution of the Settlement Fund as well as the remaining assets of the Fund.

The Effective Date has now occurred. Moreover, all outstanding litigation and regulatory actions that impacted the \$4 million Future Defense Fund provided for in Section 11 of the Stipulation have now been resolved, and the remainder of that money (approximately \$3 million,

¹ Unless otherwise noted, capitalized terms have the meanings set out in the Stipulation and Agreement of Settlement Dated August 14, 2013 (ECF No. 91-1), as amended by the Amendment No. 1 to the Stipulation and Agreement of Settlement Dated August 14, 2013 (“Amendment No. 1,” ECF No. 94-2) (collectively, the “Stipulation”).

Lead Counsel is informed) is available for distribution to Fund shareholders. Accordingly, Lead Counsel, with the support of the Fund's Board, seeks the Court's entry of the [Proposed] Final Distribution Order so that Crederian may complete the final calculations necessary for distribution of the Cash Contribution and the remaining assets of the Primary Fund. As set forth in the accompanying Grace Declaration, Crederian expects it will be able to perform the calculations, conduct the necessary procedures, and make the distributions promptly (within 75 days) after entry of the Final Distribution Order.²

If approved, the Final Distribution Order will:

(1) order Crederian to distribute the Cash Contribution to Class Members, subject to a \$10 minimum distribution, as set forth in paragraph 10 of the Stipulation;

(2) as set forth in paragraph 11.b. of the Stipulation, approve of a hold back from the final distribution to Shareholders, pursuant to a revised post-distribution budget which will be proposed by the Fund's Board within three (3) business days of the filing of this Motion; and

(3) order Crederian to distribute the remaining balance of the assets in the Primary Fund, including any unused amounts remaining in the Net Settlement Fund after all final reimbursements approved by the Mediator are paid out of the Future Defense Fund, to Fund Shareholders in accordance with the Court's pro rata distribution plan in the Court's November 25, 2009 Order in the SEC Action, and all subsequent orders of the Court related to the pro rata

² Lead Counsel and the Fund Board are informed that the procedures necessary to conduct the distribution include: (i) finalizing of the Plan of Liquidation; (ii) setting aside the amount in the revised post-distribution budget to be proposed by the Fund's Board subject to this Court's approval; (iii) performance by KPMG LLP of certain agreed-upon procedures pre-distribution, including the ascertainment of net monies available for distribution to Class Members and Shareholders; (iv) paying of all remaining amounts from the Future Defense Fund after approval by the Mediator in accordance with the Stipulation; and (iv) making of the distribution to Class Members and Shareholders.

distribution of the Primary Fund, subject to a \$10 minimum distribution, as set forth in paragraph 11 of the Stipulation.

II. CONCLUSION

For the foregoing reasons, Lead Counsel, with the support of the Fund's Board, respectfully requests that this Court enter the proposed Final Distribution Order submitted simultaneously herewith.

Dated: August 15, 2014

New York, New York

**BERNSTEIN LITOWITZ BERGER
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/s/ John C. Browne

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